HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:23080 OF 2007

Dated: 05.11.2007

-

Between:

B. Lakshmi Rajyam

..Petitioner

And

1. The Secretary to Government of India, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi and others.

.Respondents.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&

HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:23080 OF 2007

ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

This is a writ petition filed by the petitioner challenging the order of the tribunal, dated 21.8.2007 in O.A.No.678 of 2006.

The petitioner is the applicant before the tribunal. She filed the above O.A. seeking to declare the action of respondents 1 & 2 in not promoting her as Senior Administrative Grade Cadre with effect from the date of promotion of her junior i.e.,3rd respondent as per the DPC recommendations for the year 2002-2003 and 2003-2004 and not considering the order in O.A.No.132 of 2005 as illegal and to direct respondents 1 and 2 to promote the applicant to the Cadre of Senior Administrative Grade with all consequential benefits.

It is the case of the applicant that while she was working as C.M.O., CGHS., Hyderabad, a charge sheet was issued against her on 5.10.2001. While the same is pending, her case for promotion to senior Administrative Grade came up in the year 2004 and her case was kept in a sealed cover and subsequently, a penalty of Censure was imposed on her. Challenging the same, she filed O.A.132/2005 before the Tribunal, in which, the tribunal on considering the assessment made by the DPC in respect of the applicant, has observed that the respondents were at liberty to pass appropriate orders as per rules. Subsequently, 31 C.M.Os., were appointed in the SAG, but the case of the applicant has not

been considered. Hence, she filed the present O.A.

The tribunal having observed that the applicant was imposed penalty of Censure and for that reason only, the ACC, which is the appointing authority has not accepted the recommendations of DPC and it is up to the appointing authority to decide what bench mark should be there for promotion to an officer to the SAG and the decision is within realm of the executive decision, dismissed the above O.A. Having aggrieved by the same, the present writ petition has been preferred.

Heard the learned Counsel for the petitioner and Sri A. Rajasekhar Reddy, Asst. Solicitor General, appearing for the respondents and perused the material available on record.

The learned Counsel for the petitioner contended that the censure is not a bar for promotion and therefore, she is entitled to be promoted from the year 2002-2003 and even if it is assumed that she is not entitled to be promoted for the years 2002-2003 and 2003-2004 on account of pendency of charge memo and censure passed against her, at least, her case for promotion ought to have been considered for the year 2004-2005 treating it as prospective promotion and that she is going to be retired in the year 2008 and therefore, her case may be considered.

On the other hand, the learned Counsel for the respondents contended that the applicant is not entitled to be considered for promotion for the years 2004-05 on account of censure and she is entitled to be considered for the year 2006-07 and that it is the discretion of the ACC, which is the appointing authority, to

consider the recommendations of the DPC or not and therefore, the order of the tribunal needs no interference and the writ petition is liable to be dismissed.

On a perusal of the material available on record, it is an undisputed fact that penalty of censure was imposed on the applicant by an order dated 19.8.2004, but however, the DPC recommended her for promotion to the ACC, which is the appointing authority, but ACC did not accept those recommendations in respect of the applicant but for the imposition of Censure.

Now, it is the case of the applicant that though her case was not considered for the years, 2002-03 and 2003-04, but her case may be considered for the next year 2004-05 on the ground that the censure imposed in the year 2004, cannot be an impediment for her prospective promotion.

The material on record clearly goes to show that in spite of the recommendations, the ACC denied the case of the applicant. No doubt, it is the discretion of the ACC, which is the appointing authority to accept or deny the recommendations. But, however, it is to be noted that the applicant has lost her promotion since 2002 to 2005 but for the imposition of censure. At this stage, it is not out of place to mention that the censure was imposed on 19.8.2004, which would be in force till 19.8.2005 as per the rules. Subsequently, the case of the applicant was considered by the next D.P.C. in its meeting held on 1.12.2005 in U.P.S.C and the applicant was recommended as fit for promotion. However, the

A.C.C while according their approval, directed the D.P.C to re assess the case of the applicant. The U.P.S.C in turn had stated that no new facts have been brought out for re assessment of the case of the applicant nor any reasons have been stated for not accepting the D.P.C's recommendations.

At this stage, it is relevant to note that the panel year starts from 1st September of every year and the punishment of censure imposed against the applicant, expired by August, 2005.

In this background of the matter and in view of the expiry of the censure period imposed as per the rules and in view of the recommendations of the D.P.C in the year 2005, We feel it a fit case wherein the case of the petitioner-applicant can be considered for the promotion for the panel year 2005-2006 as per rules and in consonance with the recommendations of the D.P.C made on 1.12.2005.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

_____

Justice T. Meena Kumari

_____

Justice G.Chandraiah

Date: 5.11.2007
Gurc/nn

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:23080 OF 2007

(Order delivered by the Hon'ble Smt Justice T. Meena Kumari)

05/11/2007

-

-

-

-

-

-

-